

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1130 of 1995

in

SPECIAL CIVIL APPLICATION No 9032 of 1995

with

CIVIL APPLICATION No 756 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DILIPKUMAR MULSHANKER JOSHI

Versus

GOVERNMENT OF INDIA

Appearance:

MR NV ANJARIA for Petitioner
MR JAYANT PATEL for Respondent No. 1
SERVED for Respondent No. 2
MR KM PATEL for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 24/06/96

ORAL JUDGEMENT (per C.K.Thakkar, J)

1. This appeal is directed against the order passed by the learned Single Judge in Special Civil Application No.9032 of 1995 in which the petition filed by the petitioner came to be dismissed by an order dated November 17, 1995. The case of the appellant is that he has served as Sepoi with Dena Bank, Mandvi - respondent No.3 herein. According to him he served from 1987 to May 1992. It is asserted by the appellant that his services came to be terminated without issuing notice and without extending the benefits to which he was otherwise eligible and entitled in May 1992. The appellant therefore made representation before the Assistant Labour Court (Central), Adipur Kachchh on August 25, 1993 seeking reinstatement with all consequential benefits. Failure report was submitted on September 15, 1994. Thereafter a representation to make reference was rejected on February 21, 1995. It was that order which was challenged by the appellant by filing the above petition. It appears that the matter was posted for hearing before the learned Single Judge. Learned Single Judge granted time to the appellant to supply details about the actual period for which the petitioner might have worked. This was done with a view to satisfy the court that the services of the petitioner came to be terminated in contravention of the provisions of the Act and in spite of the fact that the appellant had worked in one year for 240 days or more, the services were terminated and the said action required interference and the action of rejection of reference was assailed. As the learned Single Judge observed in the order that in spite of time being granted no details could be furnished and under these circumstances, learned Single Judge dismissed the petition. While dismissing the petition the learned Single Judge observed that opportunity was granted to the appellant (petitioner) to apply as and when necessary details are available.

2. Mr. Anjaria, learned counsel for the appellant raised various contentions. He contented that the authority by not making the reference has committed an error of law apparent on the face of record in making the application. It was not open to the authority to enter into controversy and to decide application on merits. While exercising power under Section 12 read with Section 10, he was performing administrative power pure and simple and he could not have entered into the merits of the matter. So far proposition of law is concerned, there cannot be two opinions about it. The question however remains as to whether in the facts and circumstances of the case can it be said that the rule making authority has entered into merit of the matter and

has adjudicated the issue. The case of the appellant is that his services were wrongly terminated and inspite of the fact that he has completed 240 days, the action was taken which was contrary to law. Neither before the learned Single Judge nor before us, the learned counsel for the appellant could point out as to in a year the appellant has completed 240 days. In our opinion, therefore, it cannot be said that while passing the order and exercising power the rule making authority has entered into the merits of the matter. As observed by the Honourable Supreme Court in *Bombay Union of Journalists and others v. The State of Bombay and another* (1964 SC 1617, prima facie examination of merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with dispute under Section 10(1). In our opinion, in the facts and circumstances of the case, the enquiry as to whether the petitioner had completed 240 days or not cannot be said to be a quasi judicial enquiry and therefore it was open to the authority to apply its mind only with a view to see as to whether any prima facie case is made out. Since the appellant was not in a position to satisfy the authority with regard to that, the action which was taken cannot be said to be contrary to law. Similarly we do not see any infirmity in the order passed by the learned Single Judge and the appeal is hereby dismissed.
